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In The

Supreme Court of the United States

October Term, 1977

No. 77-979

APPALACHIAN POWER COMPANY,
Appellant,

v.

THE PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA,
Appellee.

On Appeal from the Supreme Court of Appeals
of the State of West Virginia

BRIEF OF THE COMMONWEALTH OF VIRGINIA AS AMICUS CURIAE IN SUPPORT OF JURISDICTIONAL STATEMENT

COMMONWEALTH OF VIRGINIA

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This brief as *amicus curiae* is filed by the Commonwealth of Virginia, by its counsel, the Attorney General of Virginia pursuant to Rule 42(4) of the Rules of this Court. The Commonwealth of Virginia respectfully requests the Court to take jurisdiction in this case.

INTEREST OF AMICUS CURIAE

Citizens of Virginia purchase large quantities of electric energy from the Appalachian Power Company ("Appalachian"). Appalachian is an electric utility serving more than 330,000 customers in the Commonwealth of Virginia

and an approximately equal number of customers in the State of West Virginia.* While Appalachian's rates are determined by several regulatory agencies, Appalachian attracts capital from external sources as a single corporate entity. Despite the authorization of fair and reasonable rates in one jurisdiction, the utility may be unable to attract the necessary capital due to an inadequate level of revenues generated by rates set by other jurisdictions. Thus, the citizens of Virginia who rely on electric service provided by Appalachian may be harmed by rate-making decisions rendered in jurisdictions other than Virginia. The Commonwealth submits this brief on behalf of its citizens.

ARGUMENT

For purposes of this brief the Commonwealth of Virginia relies upon the statement of the case contained in the Jurisdictional Statement. Assuming that the facts stated therein are proved by substantial evidence on the record of the West Virginia proceedings, this case poses substantial questions concerning the ability of Appalachian to continue to provide adequate service to its ratepayers in Virginia.

If the effect of the West Virginia decision is to preclude Appalachian from raising senior capital, and to otherwise impair its credit in the financial markets, the citizens of the Commonwealth may be adversely affected. The cost of service to citizens of the Commonwealth may increase and the adequacy of service may be jeopardized. The commerce of the Commonwealth may be similarly affected. The assurance of an adequate supply of electricity is vital to the continued economic growth and well-being of the areas served by Appalachian.

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* Rates and service affecting approximately 42 percent of Appalachian's business are regulated by the Virginia State Corporation Commission, 47 percent by the West Virginia Public Service Commission, and 11 percent by the Federal Energy Regulatory Commission.

This case presents substantial issues concerning Appalachian's constitutional right to rates which are sufficient to permit it to attract capital. See, *Federal Power Commission* v. *Hope Natural Gas Co.*, 320 U.S. 591 (1944); *Bluefield Water Works & Improvement Co.* v. *Public Service Commission of West Virginia*, 262 U.S. 679 (1923). However, the concern of the Commonwealth of Virginia transcends the immediate financial integrity and credit standing of Appalachian. The Commonwealth's concern is for the well-being of its citizens who depend on electric energy generated by Appalachian. In this case, the interests of citizens of the Commonwealth coincide with the interest of Appalachian. If Appalachian is unable to obtain the capital necessary to fulfill its construction requirements, adequate service to which the citizens of Virginia are entitled may not be provided. VA. CODE § 56-234 (Supp. 1977).

CONCLUSION

As *amicus curiae*, the Commonwealth of Virginia hereby respectfully urges this Court to grant the appeal herein sought by Appalachian Power Company from The Supreme Court of Appeals of the State of West Virginia.

Respectfully submitted,

COMMONWEALTH OF VIRGINIA

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